

**REMARKS****OVERVIEW**

Claims 1-23 and 25-39 are currently pending in this application. Claim 24 has been previously withdrawn from consideration in response to the restriction requirement which held that it is related to an independent and distinct invention, and must be pursued in a related application. Claim 24 is now cancelled. Independent claims 1, 13 and 26 have been amended and claims 38 and 39 are new. The present response is an earnest effort to advance the prosecution of this case and it is respectfully submitted that this response places all claims in proper form for immediate allowance.

**ISSUES UNDER 35 U.S.C. § 112**

Claims 1-37 have been rejected by the Examiner under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In particular, with respect to claims 1-12, the phrase the term "exceeds" was not present in claim 1, step (h). Therefore, claim 1 has been amended as per the Examiner's suggestion.

With respect to claims 13-23, the Examiner indicates that the term "pending" is used to describe a contract prior to execution. Although it is believed that use of the term "pending" is clear given its context, the term "pending" has been replaced with --proposed--.

The Examiner indicates that claim 25, step (b) is unclear, but it is believed that the Examiner is referring to claim 13 and not claim 25. In particular, the Examiner indicates that step (b) recites establishing a desired allocation of an amount to a user (assumed to be a

supplier), but no method describing such allocation is set forth. Claim 13 has been appropriately amended.

With respect to claim 25, the Examiner indicates that use of the term "pending" is confusing. Therefore, "pending" has been replaced with --proposed--.

Therefore it is respectfully submitted that all issues under 35 U.S.C. § 112 have been remedied and all rejections should be withdrawn.

### ISSUES UNDER 35 U.S.C. § 103

Claims 1-2, 4-8, and 10-28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,794,207 to Walker et al. in view of U.S. Patent No. 5,794,207 to Silverman et al. and further in view of U.S. Patent No. 5,101,353 to Lupien. The Examiner also notes that arguments previously made were not applicable as the Examiner did not consider the claims to require further contracting (Office Action, p. 4).

Although the applicant disagrees with such a characterization, the independent claims have been amended to emphasize the distinction. In addition, new limitations have been added to the independent claim to further distinguish the context of the claimed invention from Walker, Silverman and Lupien.

With respect to claim 1, note that claim 1 has been amended to recite that the supplier is willing to "commit to growing and supplying to the buyer at harvest or after harvest." The contract is a future contract in that the crop has not yet been harvested when the contract is made. To reflect the realities of agricultural production, as one skilled in the art would understand, sometimes a producer may grow less crop than intended due to adverse weather or other problems. In such instance, a producer may be able to buy quantities from others and supply

these quantities to the buyer in order to fulfill their contract, thus the reason for the claim previously reciting "growing or supplying". By amending claim 1, the intended scope is maintained while also clearly distinguishing over contracting which is not future contracting. Here, the supplier commits to growing and supplying to the buyer, thus, clearly, at the time of commitment, the crop has not been grown and harvested.

In addition, claim 1 has been amended to clarify the allocation process to emphasize the distinct differences over the cited prior art.<sup>1</sup>

Claim 1 has been amended to recite "wherein at least one of the at least one allocation parameter is set to reduce risk associated with future contracting of agricultural commodities." Support for this amendment is found at least at pages 13-18 of the Specification as originally filed which discusses allocation based on acreage/silo/delivery time factors. None of the cited prior art references disclose this limitation, therefore this rejection must be withdrawn. Neither Walker nor Silverman et al., nor Luiper et al. is directed towards future contracting of agricultural commodities, let alone setting allocation parameters in a manner which reduces the risks of future contracting of agricultural commodities. Therefore this rejection to claim 1 must be withdrawn. As claims 2, 4-8, 10-12, and 29-37 depend from claim 1, these rejections must also be withdrawn.

With respect to claim 13, claim 13 has been amended to recite "wherein the at least one allocation parameter is set to reduce risk associated with future contracting of agricultural commodities." As none of the cited references disclose this limitation, this rejection must also be withdrawn. As claims 14-23 depend from claim 13, these rejections must also be withdrawn. As claim 24 was cancelled, this rejection is moot.

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<sup>1</sup> Although Walker is distinguishable at least for the reasons cited herein, the Applicant maintains that Walker is not legal prior art and preserves the right to appeal this issue based on the factual record previously submitted.

With respect to claim 25, claim 25 now includes the limitation of "wherein at least one of the at least one allocation parameter reduces agricultural associated risks of the one or more agricultural commodity buyers." None of the cited prior art references disclose this limitation and therefore this rejection must be withdrawn.

With respect to claim 26, claim 26 now includes the limitation of "wherein the at least one allocation parameter is set to reduce agricultural associated risks of contracting for an agricultural commodity to be grown and delivered." None of the prior art references disclose this limitation and therefore this rejection must be withdrawn. As claims 27 and 28 depend from claim 26, this rejection must also be withdrawn.

Claims 3 and 19 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker et al. in view of Silverman and Luiper and further in view of the Microsoft Press Computer Dictionary, Third Edition. Claim 3 depends from claim 1 and claim 19 depends from claim 13, therefore these rejections should be withdrawn for the reasons expressed with respect to claims 1 and 13.

#### NEW CLAIMS

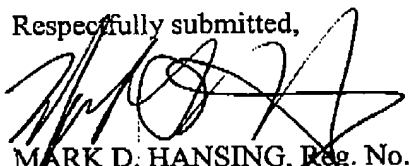
Claims 38 and 39 are new claims which claim additional details regarding the allocation process. As described at pages 13-18 of the specification, the allocation parameter is set by the buyer or seller for numerous reasons, including spreading risk amongst different acreages/geographic regions, different delivery times, etc.

**CONCLUSION**

Please consider this a three-month extension of time from October 12, 2005 to January 12, 2006 and charge Deposit Account No. 26-0084 the amount of \$510.00 for this extension. In addition, please charge Deposit Account No. 26-0084 in the amount of \$25.00 for one additional dependent claim over 20. No other fees or extensions of time are believed to be due in connection with entry of this response; however, please consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

If this response is not a result in the allowance of the application, the undersigned respectfully requests the courtesy of a telephone interview with the Examiner to discuss any remaining issues.

Respectfully submitted,



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